

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Caliente, Nevada)

MM Docket No. 01-135
RM-10154
RM-10326
RM-10327

JOINT MOTION TO SEVER
AND REQUEST FOR EXPEDITED ACTION

Marathon Media Group, L.L.P. ("Marathon"), M&M Broadcasting, LLC ("M&M"), and Marvin Kent Frandsen ("Frandsen") hereby jointly move to (i) sever the proposals in this proceeding into two groups as more particularly described herein and (ii) expeditiously process those proposals that are ripe for decision. In support, the following is shown:

1. This proceeding originated with a petition for rule making to allot Channel 291C2 at Caliente, Nevada. A *Notice of Proposed Rule Making* was issued on June 22, 2001. 16 FCC Rcd 12722 (2001). Marathon and M&M-Frandsen filed counterproposals, which were placed on public notice on October 5, 2001 and on October 23, 2001 (corrected) (Report No. 2506).

2. Marathon's counterproposal proposed to relocate Station KPLD(FM) (formerly KONY-FM) from Kanab, Utah to Moapa, Nevada. Several other changes were proposed, including the substitution of Channel 291C1 for Channel 266C1 at Amargosa Valley, Nevada. The Amargosa Valley allotment conflicts with the Caliente petition. However, Marathon demonstrated that an alternate channel, Channel 299C2, was available for allotment at Caliente to satisfy the petitioner's interest in a second local service to that community.

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3. In the other counterproposal, M&M-Frandsen proposed to relocate Station KZHK(FM) from St. George, Utah to Bunkerville, Nevada, and to relocate KADD(FM) from Laughlin, Nevada to Logandale, Nevada. Several other changes were proposed, including a substitution of Channel 291C2 for Channel 228C2 for Station KSNN at St. George, Utah. The St. George allotment conflicts with the Caliente petition. However, the same alternate channel that Marathon proposed, Channel 299C2, works at Caliente in harmony with the M&M-Frandsen proposal as well. The Marathon and M&M-Frandsen proposals are not in conflict with each other. Accordingly, no issue is presented that would require a comparison of one proposal against another, and all three proposals presented in this proceeding can be granted together.

4. Nevertheless, a recent Commission decision is expected to cause a delay in this proceeding which now entering its third year. Marathon's proposal to change the community of license of KONY from Kanab to Moapa relied upon a new allotment of Channel 270C2 at Kanab to avoid depriving that community of its only local service – a so-called backfill allotment. This comported with agency procedures at the time Marathon filed its counterproposal. See *Rangely, Silverton and Ridgway, Colorado*, 15 FCC Rcd 18266 (2000); *Refugio and Taft, Texas*, 15 FCC Rcd 8497 (2000); *Llano and Marble Falls, Texas*, 12 FCC Rcd 6809 (1997), *recon. denied*, 13 FCC Rcd 25039 (1998); *Albion, Lincoln and Columbus, Nebraska*, 8 FCC Rcd 2876 (1993), *aff'd*, 10 FCC Rcd 11931 (1995), *rev. denied sub nom. Busse Broadcasting Corp. v. FCC*, 87 F3d 1456 (D.C. Cir 1996). However, the Commission recently directed the staff to cease granting proposals that rely in this manner upon a backfill allotment. *Pacific Broadcasting of Missouri LLC, Memorandum Opinion and Order*, 18 FCC Rcd 2291 (2003) ("*Pacific-Refugio*"), *recons. pending*. In a Supplement filed in this docket on April 1, 2003, Marathon argued that the *Pacific-Refugio* rule should not be applied retroactively to its proposal in this proceeding.

However, the staff may take the view that this question must be resolved in connection with the pending *Pacific-Refugio* proceeding before the Kanab proposal can be processed here.

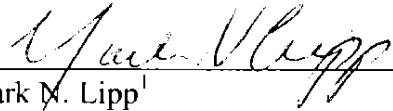
5. Importantly, the Pacific-Refugio question has no bearing whatsoever on the M&M-Frandsen counterproposal or the alternate channel at Caliente. Therefore, the Commission need not delay the processing and granting of these proposals here. The M&M-Frandsen counterproposal can be granted in its entirety, and Channel 299C2 can be allotted to Caliente in satisfaction of the petitioner's expression of interest, while a decision on Marathon's counterproposal can, if necessary, await the resolution of the Pacific-Refugio question.

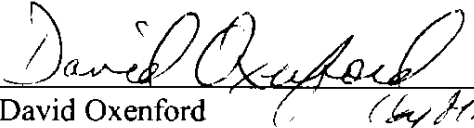
6. Thus, the Commission *should* sever and process the M&M-Frandsen counterproposal and the Caliente proposal, because it is in the public interest to do so. M&M-Frandsen propose two first local services, in furtherance of Priority (3) of the Commission's allotment priorities, and a new channel at Caliente furthers Priority (4). *See Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). Since these changes to the FM Table of Allotments demonstrably further the public interest, the Commission would be remiss if it did not make the changes as expeditiously as possible. As indicated, this proceeding is already two years old and had this proceeding been resolved prior to the *Pacific-Refugio* decision (February 11, 2003), the M&M-Frandsen proposal and the Caliente proposal would not be facing additional delays.

Respectfully submitted,

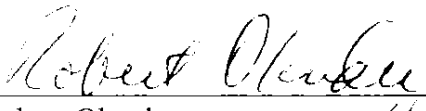
MARATHON MEDIA GROUP, L.L.C.
M&M BROADCASTSING, LLC

MARVIN KENT FRANDSEN

By: 
Mark M. Lipp¹
J. Thomas Nolan
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 639-6500

By:  (by SHK)
David Oxenford
Shaw Pittman, L.L.P.
2300 N Street, N.W.
Washington, D.C. 20037-1128
(202) 663-8000

Its Counsel

By:  (by SHK)
Robert Olender
Koerner & Olender, P.C.
5809 Nicholson Lane
Suite 124
North Bethesda, MD 20852-5706

Co-Counsel

June 12, 2003

¹ Please note the change of address.

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Vinson & Elkins, LLP. do hereby certify that I have on this 12th day of June, 2003, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Joint Motion to Sever and Request for Expedited Action" to the following:

* Ms. Sharon P. McDonald
Federal Communications Commission
445 12th Street, SW
Room 3-A226
Washington, DC 20554

Schleicher County Radio
c/o Randy Parker
25415 Glenn Lock
The Woodlands, Texas 77380
(Petitioner for Caleinte)

Sky Media, LLC.
980 N. Michigan Avenue
Suite 1880
Chicago, IL 60611
(Licensee of Station KPUP, Amargosa Valley, NV)

Richard Dean Hodson
P.O. Box 66
Tecopa, CA 92389-0066



Lisa M. Balzer

* HAND DELIVERED